

Eastern District of California

February 13, 2014 at 3:30 p.m.

- February 13, 2014 at 3:30 p.m.**
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3. [13-91641](#)-E-12 MARY COELHO

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
9-11-13 [[1](#)]

CASE DISMISSED 11/26/13

Debtor's Atty: Nancy D. Klepac

Final Ruling: The bankruptcy case having been dismissed, the Status Conference is removed from the calendar.

Notes:

Continued from 11/21/13.

[TCS-2] Debtor's Ex Parte Motion to Dismiss Case filed 11/22/13 [Dckt 33];
Order granting filed 11/26/13 [Dckt 36]

4. [12-92570](#)-E-12 COELHO DAIRY

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
9-28-12 [[1](#)]

Debtor's Atty: Thomas O. Gillis

Notes:

Continued from 11/21/13.

[TOG-8] Stipulation for Continued Use of Cash Collateral filed 11/26/13
[Dckt 360]; Order granting filed 12/3/13 [Dckt 364]

[TOG-30] Motion to Incur Secured Debt (A Second Mortgage on the Dairy Real
Property) filed 12/4/13 [Dckt 365]; Order granting filed 12/25/13 [Dckt 376]

Notice of Withdrawal of Claim #9: Bank of the West 12/19/13
Notice of Withdrawal of Claim #10: Bank of the West 12/19/13

[TOG-36] Motion of Thomas O. Gillis, Attorney for Debtor, for Approval of
Interim Compensation and Reimbursement for Costs filed 1/15/14 [Dckt 377],
set for hearing 2/13/14 at 10:30 a.m.

14-9002: Complaint for 1) Breach of Contract, 2) Common Counts filed by
Black Rock Milling Co. 1/23/14 [Dckt 383]

2014-02-13 STATUS CONFERENCE

This Chapter 12 bankruptcy case was filed on September 28, 2012. No
plan has been confirmed.

Status Report - Filed February 7, 2014

The Debtor in Possession filed an updated Status Report (Dckt. 386)
which provides the following information:

- A. The Debtor in Possession (incorrectly stated as the "Debtor" in the Status Report) obtained two post-petition loans from Nevada State Bank. Order, Dckt. 376, identifies the lenders as Nebraska State Bank.
- B. The proceeds from the post-petition financing paid off the two Bank of the West loans which were secured claims in this case and a priority tax claim in the amount of \$80,000.00.
FN.1.

FN.1. From an initial review of the file in this case, the court does not see in the order approving the post-petition financing or the motion for approval of the post-petition financing the authorization to pay an unsecured "preferred claim" (as described in the Status Report) to the Internal Revenue Service. However, the Official Register of Claims includes Proof of Claim No. 17 filed by the Internal Revenue Service, which amended Proof of Claim No. 16, also filed as a secured claim. This claim is the amount of \$80,066.05 and is asserted to be secured by the real and personal property of the Debtor, which is now property of the estate. It appears that the Internal Revenue Services was not paid on a "preferred" or "priority" claim, but on its claim which was secured by the property for which secured the post-petition financing. The court cannot identify where the Debtor in Possession sought, or the court authorized, the payment of the Internal Revenue Service claim outside of a confirmed Chapter 12 Plan.

- C. After payment of the Bank of the West secured claims and the Internal Revenue Service claim, there remains \$190,000.00 "available to the Debtor" to satisfy the remaining debts.
- D. Only three secured claims remain in the case,
 - 1. Nebraska State Bank Loans;
 - 2. WestAmerica Bank secured claim (proposed to be amortized over 25 years); and
 - 3. A pick-up truck loan.
- E. "Approve Claims From Schedule F" total \$161,000. The Claims Registry lists unsecured claims having been filed totaling in excess of \$702,000.00. (After adjusting for Proof of Claim No. 11 which appears to have a typographical error which has caused the case manager to list it as a \$579,664.00 claim, when it appears more likely to be \$5,796.64.)
- F. Black Rock Milling has filed an unsecured claim for \$350,000.00. The Debtor in Possession asserts that the claim is much smaller. Black Rock Milling has filed a state court action against the partners of the Debtor and has filed an adversary proceeding in connection with this bankruptcy case, as well as filing Proof of Claim No. 24.

An amended Chapter 12 Plan was filed on February 10, 2014. Dckt. 394. The basic terms of the Plan are:

- A. Class 2.1 Secured Claim of Nevada State Bank. Post-Petition financing debt to be paid at the terms of post-petition financing. (This appears to be the Nebraska State Bank post-petition debt.) Mary Coelho, a partner of the Debtor, has agreed to list her real property for sale to pay off the Class 2.1 claims. Direct payments are to be made on this claim through a milk assignment.
- B. Class 2.2 Secured Claim of WestAmerica Bank. \$899,500.00 claim secured by the Langworth Road Property, to be amortized over 25 years at 5.25% interest, with the balance being due and payable seven years from confirmation. Direct payments are to be made on this claim through a milk assignment.
- C. Class 2.3 Secured Claim of CNH Capital. \$3,252.30 claim to be paid in full within 60 days of confirmation.
- D. Class 2.4 Claim of Wells Fargo Dealer Services. \$18,200.00 secured claim to be amortized over 60 months at 5% interest.
- E. Class 4 Priority Claims. No claims, the Internal Revenue Service having been paid on its claim through the refinance of the Bank of the West secured claims.
- F. Class 5 General Unsecured Claims. The Class 5 claims shall be paid in full with interest computed at 0.5%. These are to be paid from the \$192,000.00 of refinance proceeds which remain. After paying all of the other claims, whatever remains from the \$192,000.00 will be held by the Trustee for the disputed \$335,000.00 unsecured claim of Black Rock Milling.
- G. Class 6 Executory Contracts and Leases. The following will be assumed upon confirmation:

B&J Pollins 301 Crawford Rd Modesto, CA 95356	3113 De Wit Rd Modesto, CA Debtor farms this land
Conrado Ho and Karen Wang 1193 Johnson Avenue San Jose, CA 95128	12 acres on 3519 Milnes Road in Modesto, California Debtor farms this leased land
Cropp Cooperative One Organic way La Farge, WI 54639	Contract for milk sales to this cooperative
E & J Chittas 48 San Felipe Ave San Francisco, CA 94127	25 acres on Church Street in Modesto Debtor farms this land
Larry & Ronald Nydabe 1348 Cleahabel Rd Oakdale, CA 95361	75 acres on Church Road Oakdale, CA Debtor farms this land
Luis R. Osborn 4661 Milnes Road Modesto, CA 95357	40 acres on Milnes Road Modesto, CA Debtor farms this land

- H. The Debtor will continue to operate the dairy business and use disposable income (in an unstated amount) to fund the Plan.

The Declaration of Mary Coelho has been filed in support of the motion to confirm. Declaration, Dckt. 392. Mary Coelho testifies under penalty of perjury that her property is secured for an obligation owing to Nevada State Bank. She believes that the property is worth \$1,400,000.00, and has listed it with an undisclosed real estate broker. This declaration is problematic, because it appears that the debt secured by Mary Coelho's property is that owed to Nebraska State Bank. Given that a bankruptcy case was filed by counsel for the Debtor in Possession for Mary Coelho, and such counsel hid his participation, these statements under penalty of perjury cause the court concern. Mary Coelho Bankruptcy Case, 13-91641. In that case, this court found,

"OCTOBER 10, 2013 STATUS CONFERENCE

Thomas Gillis appeared at the hearing, stating that he was not counsel for the Debtor in Possession. However, the court records show that he electronically filed the Petition for the Debtor, which filing certifies Case Number: 2013-91641 Filed: 10/10/2013 Doc # 23 that Mr. Gillis is the counsel for the Debtor [Mary Coelho].

Mr. Gillis is counsel for the Coelho Dairy Partnership in its bankruptcy case, for which Mary Coelho is identified as a general partner for the Coelho Family Trust. Issues identified by the court include (1) whether Mr. Gillis has an irreconcilable conflict as the attorney for the Coelho Dairy Partnership and attempting to give legal advice to one of the general partners, (2) the contention that Mary Coelho was not able to understand that she was signing a deed of trust to secure debt of the Coelho Dairy Partnership, (3) the Schedules filed by Mary Coelho under penalty of perjury do not list any interests in any trusts and asserts a personal interest in the Coelho Dairy Partnership (not that of being a general partner in her fiduciary capacity as a trustee), (4) income of less than \$800 a month on Schedule I, and (5) the Debtor showing ownership of no significant personal property assets other than the asserted 50% interest in the Coelho Dairy Partnership (which does not generate any income for the Debtor).

The filing of this bankruptcy petition appears not to have been done by Mary Coelho knowledgeably and intentionally. She may well have been placed in bankruptcy through the actions of others, including the other general partner in the Coelho Dairy Partnership.

At the hearing, Thomas Gillis stated that he was "looking for" bankruptcy counsel for Mary Coelho. This bankruptcy case was filed on September 11, 2013. It is now a month

later and Mary Coelho is only having Mr. Gillis "looking for counsel."

The court finds that the immediate dismissal of this case is necessary and proper to dismiss this case for cause. The court is convinced that Mary Coelho is not actively participating in the filing of this case and it continuing may work to harm her interests. Further, the Schedules filed in this case demonstrate that there is no good faith attempt being made to prosecute a Chapter 12 case. Third, though he filed the case for the Debtor, Thomas Gillis did not list his name on the Petition. The attempted secret representation of a debtor in possession in a Chapter 12 case is not conduct which shall be condoned.

At the Status Conference Thomas Gillis, who stated that he "did not" file the case for Mary Coelho and that he was "looking for counsel" for Mary Coelho, represented that Mary Coelho did not oppose the court dismissing this Chapter 12 case. However, the court cannot determine if Thomas Gillis actually represents Mary Coelho or whether Mary Coelho actually is aware that she has commenced a Chapter 12 bankruptcy case. Further, there is grossly inaccurate information in the Schedules filed under penalty of perjury by Mary Coelho. The court will not ignore this conduct and grant the requested dismissal by counsel without further inquiry."

Civil Minutes, 13-91641, Dckt. 23. It appears from the declaration presented by the Debtor in Possession and Counsel that Mary Coelho is unaware of who has obtained a lien on her property, and may quite well be the subject of undue influence and manipulation.

5. [13-91189](#)-E-11 MICHAEL/JUDY HOUSE

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-25-13 [[1](#)]

Debtors' Atty: Robert M. Yaspan

Notes:

Continued from 10/31/13

Operating Report filed: 11/14/13, 12/11/13, 1/8/14

[RMY-3] Order granting motion to employ appraisers filed 11/25/13 [Dckt 74]

[RMY-4] Order denying motion for an order setting claims bar date filed 11/30/13 [Dckt 77]

[RMY-5] Debtors' Motion for Entry of Interim Orders (A) Authorizing the Continued Use of Cash Collateral; (B) Granting Adequate Protection to Prepetition Secured Parties; and (C) Scheduling Further Hearings filed 1/13/14 [Dckt 81], set for hearing 2/13/14 at 10:30 a.m.

Status Conference Report filed 1/29/14 [Dckt 87]

2014-01-29 Filed Status Report (Dckt. 87)

Information provided by the Debtors in Possession in their Status report includes the following:

- A. The Debtors in Possession are continuing to investigate the options for restructuring their finances.
- B. The Debtors in Possession have obtained authorization for the use of cash collateral.

2014-01 Monthly Operating Report

January, 2014 Report		Filed: February 11, 2014		
INCOME	Current		Cumulative	
Rents	\$ 19,934.00		\$ 166,443.00	
Sales	\$ 1,652.00		\$ 11,021.00	
Interest	\$ 1.00		\$ 3.00	
Wages	\$ 290.00		\$ 5,959.00	
Sale of Disney Timeshares			\$ 8,051.00	
Gifts from Family	\$ 2,000.00		\$ 2,000.00	

Total	\$ 23,877.00		\$ 193,477.00	
EXPENSES	\$ (25,215.00)		\$ (225,731.00)	
PROFIT/ (LOSS)	\$ (1,338.00)		\$ (32,254.00)	
Specific Expenses	Current			Cumulative
Insurance	\$	0.00		\$ (16,550.00)
Outside Contractors	\$	(660.00)		\$ (4,855.00)
Telephone	\$	(644.00)		\$ (2,180.00)
Principal Payment on Debt				
American Ag Credit	\$	(4,224.00)		\$ (29,568.00)
House Trust	\$	(5,517.00)		\$ (38,618.00)
Oak Valley	\$	1,693.00		\$ (12,204.00)
House Trust	\$	1,200.00		\$ (8,400.00)
Petaluma Acquisition	\$	0.00		\$ (25,103.00)
Real Property Lease	\$	(1,500.00)		\$ (6,687.00)
Professional Fees	\$	(6,500.00)		\$ (10,485.00)
Gifts and Charitable Contributions	\$	(350.00)		\$ (6,025.00)

6. [12-36419](#)-E-11 KFP-LODI, LLC
Scott A. CoBen

CONTINUED CONFIRMATION OF THIRD
AMENDED PLAN OF REORGANIZATION
BY DEBTOR
11-22-13 [[357](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, all creditors, and Office of the United States Trustee on January 21, 2013.

Final Ruling: The Motion to Confirm has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

The court's decision is to grant the Motion to Confirm. No appearance at the February 13, 2014 hearing is required.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

<u>12-6-13</u>	Plan, Disclosure Statement, Disc Stmt Order, and Ballots Mailed
<u>1-6-14</u>	Last Day for Submitting Written Acceptances or Rejections
<u>1-6-14</u>	Last Day to File Objections to Confirmation
<u>1-21-14</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

Amended Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 County of San Joaquin - Secured	For: 1 Against: 0	100%	100%
Class 2 Terra Cotta Realty Fund, LLC - Secured	For: 1 Against: 0	100%	100%
Class 3 SGB I, LLC - Secured	For: 1 Against: 0	100%	100%
Class 4 Navin Patel - Secured	For: 1 Against: 0	100%	100%

Class 5 Zions First National Bank - Secured	For: 1 Against: 0	100%	100%
Class 6 Community Reinvestment Fund - Secured	For: 1 Against: 0	100%	100%
Class 7 Navin Patel - Secured	For:1 Against: 0	100%	100%
Class 8 General Unsecured	For: 1 Against: 0	100%	100%
Class 9 Interest of Debtor	For: 0 Against: 0	0%	0%

Declaration of Kyu Kim, representative of Debtor-in-Possession, filed in support of confirmation provides evidence of the compliance with the necessary elements for confirmation in 11 U.S.C. § 1129:

11 U.S.C. § 1129(a) .

1. The plan complies with the applicable provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et seq.

Evidence: Declaration, ¶ 11.

2. The proponent of the plan complies with the applicable provisions of the Bankruptcy Code.

Evidence: Declaration, ¶ 12.

3. The plan has been proposed in good faith and not by any means forbidden by law.

Evidence: Declaration, ¶ 13.

4. Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

Evidence: N/A

5. (A) (I) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the

debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

Evidence: Declaration, ¶ 14.

6. Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

Evidence: N/A

7. With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(I) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code, 11 U.S.C. §§ 701 et seq., on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

Evidence: Amended Tabulation of Ballots

8. With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

Evidence: Amended Tabulation of Ballots

9. Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of the Bankruptcy Code, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

Evidence: N/A

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of the Bankruptcy Code, each holder of a claim of such class will receive--

(I) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

Evidence: N/A

(C) with respect to a claim of a kind specified in section 507(a)(8) of the Bankruptcy Code, the holder of such claim will receive on account of such claim regular installment payments in cash--

(I) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

Evidence: N/A

10. If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

Evidence: Tabulation of Ballots

11. Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

Evidence: Declaration, ¶ 15.

12. All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

Evidence: Declaration, ¶ 18.

13. The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

Evidence: N/A

14. If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

15. In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan--

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

Evidence: N/A

16. All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

Evidence: N/A

The court notes that all classes of creditors have voted for the plan, including unsecured creditors in Class 8 with inclusion of the amended ballots. Therefore, a cramdown analysis is not required.

CONCLUSION

Based on the foregoing, the court's decision is to grant the Motion to confirm the Chapter 11 Plan of Reorganization.

Counsel for Debtor shall prepare an order consistent with this ruling, to which a copy of the confirm plan is attached, and lodge it with the court.

7. [12-36419](#)-E-11 KFP-LODI, LLC CONTINUED AMENDED MOTION FOR
RPG-1 Scott A. CoBen RELIEF FROM AUTOMATIC STAY
6-24-13 [[245](#)]

SGB1, LLC VS.

CONT. FROM 11-7-13, 9-18-13, 8-29-13, 8-8-13, 7-25-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 12, 2013. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

The court's decision is to deny the Motion without Prejudice. No appearance at the February 13, 2014 hearing is required.

This Motion has been resolved by the confirmation of the Chapter 11 Plan in this case. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice.

8. [12-36419](#)-E-11 KFP-LODI, LLC CONTINUED MOTION FOR RELIEF
TMG-2 Scott A. CoBen FROM AUTOMATIC STAY
6-27-13 [[249](#)]

TERRACOTTA REALTY FUND, LLC
VS.

CONT. FROM 11-7-13, 9-18-13, 8-29-13, 8-8-13, 7-25-13

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, and Office of the United States Trustee on June 27, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Debtor having filed an opposition, the court will address the merits of the motion at the hearing.

The court's decision is to deny the Motion without Prejudice. No appearance at the February 13, 2014 hearing is required.

This Motion has been resolved by the confirmation of the Chapter 11 Plan in this case. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, the consent of the Movant to continue the hearing to August 8, 2013 to be conducted in conjunction with a hearing on a motion for approval of a disclosure statement in this case,

and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is denied without prejudice.